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Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6506
Docket No. 6384-I
2-B&O-I-'73

The Second Division consisted of the regular members and in addition Referee Irwin M. Lieberman when award was rendered.

Parties to Dispute: { Louis E. Foreman (Petitioner)
{
{
{ Baltimore & Ohio Railroad Company

Dispute: Claim of Employees:

1. Mr. Foreman was not properly discharged for insubordination since the record clearly shows that he was ill and within his rights to refuse an offered assignment.
2. The punishment assessed, discharge, was excessive, arbitrary and discriminatory, especially when compared to the short suspensions received by two other employees involved in the same incident.
3. Mr. Foreman was not afforded a fair hearing by the carrier, in that the person he allegedly disobeyed was a member of the hearing Board.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employees involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Claimant was dismissed from service on March 22, 1971, after a hearing, on the charge of insubordination. On March 29, 1971, Claimant appealed the dismissal by letter, which read in part:

"... I feel the case was based on bias, prejudice and jealousy. The local chairman did not even speak up in defense of the men and I feel that an unbiased person should take his place for the new hearing that I request."

After the claim was declined by Carrier, by letter of June 21, 1971 the Organization's ex parte submission to the Director of Labor Relations requested reinstatement and full back pay inter alia. Carrier at the conference on the property argued that the claim on appeal was never handled with the initial officer and hence did not meet the provisions of Article V of the applicable Agreement. Claimant argues that he should not be punished for the failure of the union to adequately process his claim and because his rights were relinquished by the union. The record does not support Claimant's contention, particularly since he specifically rejected representation by the Organization at the hearing.

It is clear from the record that the claim Petitioner is asserting before this Board was not handled on the property of the Carrier in accordance with the provisions of the applicable Agreement and as required by Section 3, First (i) of the Railway Labor Act and Circular No. 1 of the National Railroad Adjustment Board. The Claim is therefore barred from consideration by this Division and will be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: E. A. Killean
Executive Secretary

Dated at Chicago, Illinois, this 30th day of May, 1973.